

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

SPH AMERICA LLC,

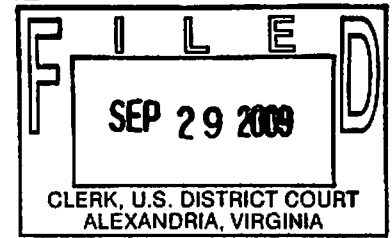
Plaintiffs,

V.

FOLEY & LARDNER, LLP,

Defendants.

1:09cv945 (LMB/JFA)



ORDER

Plaintiff SPH America, LLC, has filed a Notice of Voluntary Dismissal under Fed.R.Civ.P. 41(a)(1)(A)(i), in which it seeks to dismiss this complaint without prejudice<sup>1</sup>. Because the defendant has not filed an answer or motion for summary judgment, under normal circumstances the plaintiff would be entitled to dismiss its complaint without prejudice. However, this plaintiff has an unusual record of filing complaints in this district and then dismissing them. Over the past fourteen months, plaintiff has filed six civil actions<sup>2</sup>, none of which have resulted in a

1The complaint was filed on August 21, 2009. Plaintiff moved to have the complaint sealed, which was opposed by the defendant. The motion was denied. The defendant requested a brief extension of the time to answer, which plaintiff opposed without good cause. We summarily overruled the plaintiff's objection and extended the time by which defendant had to answer to September 30, 2009. Late in the day on September 28, 2009, the plaintiff filed its Notice of Voluntary Dismissal. Why it waited so long to file this motion has not been explained.

<sup>2</sup>See SPH America, LLC v. High Tech Computer Corporation et al., No. 1:08-cv-702 (July 9, 2009 E.D. Va.) (Complaint filed July 9, 2009, two defendants voluntarily dismissed on September 22,

judgment in plaintiff's favor<sup>3</sup>. One case, SPH America, LLC v. High Tech Computer Corporation et al, was transferred by Judge Gerald B. Lee to the Southern District of California and all the others were either dismissed upon plaintiff's motion or are still pending, strongly suggesting that the plaintiff does not have the intention or ability to pursue the merits of its claims. Vigorous arguments of judge shopping have also been raised in SPH America, LLC v. Acer, Inc. et al.

To ensure that the plaintiff is not filing vexatious

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2009, two more defendants voluntarily dismissed on October 21, 2009); SPH America, LLC v. Kyocera Corporation et al, No. 2:09-cv-276 (June 12, 2009 E.D. Va.) (Complaint filed June 12, 2009, voluntarily dismissed July 1, 2009); SPH America, LLC v. Nokia Corporation et al, No. 1:09-701 (June 25, 2009 E.D. Va.) (Complaint filed June 25, 2009, voluntarily dismissed July 2, 2009); SPH America, LLC v. Acer, Inc. et al, No. 1:09-cv-740 (July 6, 2009 E.D. Va.) (Complaint filed July 6, 2009, two defendants voluntarily dismissed August 20, 2009); SPH America, LLC v. Apple, Inc. et al, No. 1:09-cv-776 (July 14, 2009 E.D. Va.) (Complaint filed July 14, 2006, which does not appear from the docket sheet to have yet been served on any defendant); and this action.

<sup>3</sup> SPH America shares a principal owner with WiAV Solutions, Inc., Dr. Choongsoo Park, according to Def.'s Br. in Supp. Of Mot. To Transfer in WiAV Solutions LLC v. Motorola et al, No. 3:09-447, Dkt. 62, n.2. The Court notes that WiAV has engaged in a similar litigation pattern. See WiAV Solutions, LLC v. Research in Motion, Ltd. et al, No. 3:08-cv-485 (July 30, 2008 E.D. Va.) (Complaint filed July 30, 2008, voluntarily dismissed on September 26, 2008); WiAV Solutions LLC et al v. Research In Motion, Ltd. et al, No. 3:09-cv-47 (Jan. 26, 2009 E.D. Va.) (Complaint filed January 26, 2009, joint stipulation of dismissal filed on June 1, 2009); WiAV Solutions LLC v. Kyocera Corporation et al, No. 3:09-cv-373 (June 15, 2009 E.D. Va.) (Complaint filed June 15, 2009, voluntarily dismissed on August 3, 2009).

lawsuits and that this law firm defendant has not been unduly prejudiced, it is hereby

ORDERED that plaintiff show cause on Friday October 9, 2009 at 10:00 am as to why this complaint should not be dismissed with prejudice and defendant awarded costs as a prevailing party under 28 U.S.C. § 1920.

The Clerk is directed to forward copies of this Order to counsel of record.

Entered this 29<sup>th</sup> day of September, 2009.

Alexandria, Virginia

/s/ [Signature]  
Leonie M. Brinkema  
United States District Judge